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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/673,877	09/29/2003	Donna James	1-590-A	2430

7590 03/31/2004  
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EXAMINER

FERNSTROM, KURT

ART UNIT	PAPER NUMBER
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3712

DATE MAILED: 03/31/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/673,877

Applicant(s)

JAMES, DONNA

Examiner

Kurt Fernstrom

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-6 is/are allowed.
- 6) ☒ Claim(s) 7-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 101***

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 15-19 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The invention of claim 15 is directed to a method comprising the steps of having the user write in a displaceable writing medium and providing a scent to the user. While some methods are patentable, patentable subject matter requires a practical application in the technological arts. See MPEP 2106, Section IIA and *Ex Parte Bowman*, 61 USPQ2d 1669 (Unpublished) and *In re Foster*, 169 USPQ 99 (CCPA 1971). The claim as written is extremely broad does not involve an advancement in the technological arts. The simple act of going to the beach and writing one's name in the sand reads on claim 15, as the beach inherently has certain scents. Certain of the dependent claims also fall into this category of unpatentable subject matter, as adding the act of simply eating a peppermint candy reads on claims 16 and 19.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 7-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over DuBrul in view of Green. DuBrul discloses in Figure 1 an educational tool comprising a writing board comprising a writing surface A, a raised rim B extending around the writing surface which defines the interior of the tool, and indicia comprising letters which is disposed about the rim. The term "for holding a displaceable writing medium is functional language which describes the purpose of the device, rather than providing further structural limitations to the invention, and thus under MPEP 2114 is not deemed to have patentable weight. DuBrul fails to disclose the step of providing a scent to the user. Green discloses in column 10, lines 30-39 a device for creating visual designs where part of the device emits a selected scent, which may be peppermint. It would have been obvious to one of ordinary skill in the relevant art to modify the device disclosed by DuBrul by providing a portion of the device with a scent for the purpose of providing a pleasant aroma during use of the device, and also for the purpose of engaging an additional sense during use. With respect to claims 8-11, 13-14 and 18, it would have been an obvious variation to provide a scent to the rim rather than to the medium. Both embodiments serve the same general purpose of providing a selected scent to a user when using the device. With respect to claim 19, Green discloses in column 9, line 54 to column 10, line 9 and also in column 10, lines 40-44 that a displaceable medium selected from a large group of materials, including some foodstuffs, is provided. It would have been obvious to one of ordinary skill in the

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relevant art to modify the device disclosed by DuBrul by providing a displaceable medium such as a foodstuff for the purpose of allowing the user to easily create a visual display which may be eaten by a young user.

Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over DuBrul in view of Gasper. DuBrul discloses in Figure 1 an educational tool comprising a writing board comprising a writing surface A, a raised rim B extending around the writing surface which defines the interior of the tool, and indicia comprising letters which is disposed about the rim. The term "for holding a displaceable writing medium is functional language which describes the purpose of the device, rather than providing further structural limitations to the invention, and thus under MPEP 2114 is not deemed to have patentable weight. DuBrul fails to disclose raised or recessed indicia. Such indicia is a known means of providing users with tactile feedback when learning letters. Gasper discloses in column 2, lines 45-58 one such example of a series of letters which is presented in raised format. It would have been obvious to one of ordinary skill in the relevant art to modify the device disclosed by Du Brul by providing raised indicia for the purpose of providing the user with indicia that can be tactilely sensed, for providing additional sensory feedback.

#### ***Allowable Subject Matter***

Claims 1-6 are allowed.

The following is a statement of reasons for the indication of allowable subject matter:

The prior art fails to disclose or suggest a device having all of the limitations of claims 1

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and 2, in particular a pour spout which communicates the interior of the tool with the exterior for allowing a user to easily pour a reusable writing medium out of the tool.

While writing tools having the other structural elements of the claims are known, as shown for example by Du Brul, these devices are generally used with conventional writing implements such as chalk, pencils, markers or crayons. The pour spout of the present invention allows the user to write using a medium such as sand, salt or flour, an application which is not disclosed or suggested by the prior art writing devices. As a result, there is no suggestion or motivation in the prior art to modify a writing tablet such as those of Du Brul by providing a pour spout. Devices which bear some structural similarity to the claimed invention and having pour spouts are known, as shown for example by Everhart and Fowler. However, these references are not analogous art, and there would be no reason to combine them with Du Brul or with Tompkins to form the claimed invention.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Tompkins, Rhees, Kingsley, Foster, Wightman, Coffey and Stuart disclose various educational devices. Etter, Anderson, Ladd, Paulsen, Amazing Products Store and Essential Health disclose various educational devices and methods which include the step of providing a scent to the user.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Fernstrom whose telephone number is (703) 305-0303. The examiner can normally be reached on M-F 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (703) 308-1745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KF  
March 28, 2004

*Kurt Fernstrom*  
Kurt Fernstrom

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